

August 23, 2000

Honorable Wayne L. Peterson  
Presiding Judge, San Diego County Superior Court  
220 W. Broadway, Department SD-P  
San Diego, CA 92101

Dear Judge Peterson:

Subject: Grand Jury Report - Fluoridation of San Diego County Water Supply

We have reviewed the Grand Jury Report on Fluoridation of San Diego County Water Supply. As required by the California Penal Code, we are forwarding comments to each finding and recommendation presented in the report.

FINDINGS

*Item #5* The most economical way to fluoridate San Diego County public water systems would be at the wholesale source, the Metropolitan Water District.

*We agree if each water agency within San Diego County were required to fluoridate, there would be over 50 fluoridation facilities installed throughout the County. However if the Metropolitan Water District were to fluoridate, they would only have to install one fluoridation facility at the Skinner Water Treatment Plant and local water agencies would then only have to install ten facilities (only at water treatment plants).*

*Item #8* The voters of the City of San Diego, a charter city, passed an ordinance in 1954 prohibiting fluoridation of its water system.

*We agree on June 8, 1954, a special municipal election was held in which voters initiated and adopted San Diego Municipal Code (SDMC) Section 67.00, which prohibits the fluoridation of City water.*

*Item #9* The Attorney General opined that State law preempts charter Cities' municipal ordinances prohibiting fluoridation.

*We agree on February 18, 2000 the Office of the Attorney General, State of California, issued opinion No. 99-1112 which concluded that the State law requiring fluoridation preempts a charter city ordinance when outside funds are made available to install and operate a fluoridation system.*

*Item #10* The Attorney General opined that a charter city must take action to commence fluoridation when sufficient outside funding is made available.

*We agree, see response #9*

*Item #11* Public water providers in San Diego County are in compliance with AB 733 until funding is made available.

*We agree the California Attorney General issued Opinion No. 99-1112 on, February 18, 2000. This opinion responded to questions involving a charter city that has an ordinance prohibiting the fluoridation of the city's water supply. Out of these 14 charter cities, the remaining affected water providers have not adopted a position of fluoridation. These ten suppliers serve a population of about 850,000. They are currently in compliance with AB 733 in that they have not been notified of the funds that would require them to fluoridate.*

*Item #15* The City of San Diego will receive approximately \$312 million over the next 25 years from tobacco settlement funds.

*We agree, it has been estimated that the City of San Diego will receive \$312 million over the next 25 years.*

*Item #20* The City of San Diego was offered \$4 million by the Fluoridation 2000 Work Group to implement a fluoridation treatment system.

*We agree on March 3, 2000, Mayor Golding received a letter from Fluoridation 2000 Work Group making available sufficient funds to install and operate a fluoridation system for 4 years.*

*Item #21* The San Diego City Council voted to accept the \$4 million offered by the Fluoridation 2000 Work Group.

*We agree, on April 11, 2000, the City Council voted to accept the funding from Fluoridation 2000 Work Group.*

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RECOMMENDATIONS

*Item # 00-45* That the City Manager of the City of San Diego explore sources of funding for future fluoridation O&M costs, including the use of a portion of the city's tobacco settlement funds.

*SDMC Section 67.00 prohibits fluoridation of the City's water supply. SDMC 67.00 is only arguably preempted by the state law which requires fluoridation when funds are made available to the City for the specific purpose of fluoridation.*

*The tobacco settlement funds were not provided to the City with the designated purpose of fluoridation. Moreover, there are no tobacco settlement funds available.*

*As a result of the national tobacco litigation, the City of San Diego is due to receive approximately \$312 million over 25 years. On February 9, 1999 the Council of the City of San Diego approved and adopted Mayor Susan Golding's memorandum to the City Council dated February 2, 1999 and "The Smart and Healthy San Diego Plan" contained therein. This plan utilizes anticipated annual tobacco litigation settlement payments to the City of San Diego as designated in the Master Settlement Agreement.*

If you have any questions regarding this information, please contact me at (619) 236-5941.

Sincerely,

Michael T. Uberuaga  
City Manager

Attachment

cc: Honorable Mayor and City Council  
Mr. Patrick Caulkin, Foreman, Grand Jury, County of San Diego  
Casey Gwinn, City Attorney

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